

CBASSP

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3/28/96

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

IN THE MATTER OF: MYLET FAMILY)	
LIMITED PARTNERSHIP NO. 1)	Docket No. 10-95-0134
)	CERCLA
)	
UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE RE: COASTCRAFT
RESPONSE, COMPENSATION, AND)	PROPERTY SEDIMENT
LIABILITY ACT OF 1980, 42 U.S.C.)	CONTAMINATION LOCATED
§ 9601, <u>et seq.</u> , AS AMENDED.)	WITHIN THE COMMENCEMENT
)	BAY NEARSHORE/TIDEFLATS
)	SUPERFUND SITE
)	
)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and the Mylet Family Limited Partnership No. 1 (collectively the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601, et seq.

The business address of the Mylet Family Limited Partnership No. 1 ("Settling Respondent") is (b)(6) Tacoma, Washington, 98405. Settling Respondent proposes to buy the Coastcraft property ("the Property") located within the Commencement Bay Nearshore/Tideflats Superfund Site, Tacoma, Washington. The Property is located on either side of East F



Street, in the 1000 block and includes the Coastcraft main plant, outside storage and loading area, and some storage sheds. The Property consists of approximately 240,000 square feet and comprises approximately 5.51 acres. A legal description of the Property is attached to this Agreement as Exhibit 1, and a map depicting the configuration of the Property is attached as Exhibit 2.

Settling Respondent proposes to lease the Property for commercial warehousing and other industrial uses.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Sediment Contamination, as defined in Paragraph 2 of Section II (Definitions), at the Commencement Bay Nearshore/Tideflats Superfund Site ("CB N/T Site"), which would otherwise result from Settling Respondent becoming the owner of the Property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Sediment Contamination" shall refer to contamination by any hazardous substances, pollutants or contaminants of the marine and intertidal sediments present or existing as of the effective date of this Agreement, and located within the Middle Waterway Problem Area and the seven other problem areas within the CB N/T Site. The term Existing Sediment Contamination does not include contamination currently present or existing on, at, or under the Coastcraft Property or any other upland property within the CB N/T Site, except for contamination present or existing, on, at, or under that portion of the Coastcraft Property that is below the mean high high water mark of Middle Waterway (i.e., contaminated marine and intertidal sediments).

3. "Commencement Bay Nearshore/Tideflats Superfund Site ("CB N/T Site" or "Site") means the entire Commencement Bay Nearshore/Tideflats Superfund Site and project area, including contaminated sediments and sources of contamination within the

Site, located in Tacoma, Washington as defined in the Commencement Bay Nearshore/Tideflats Record of Decision.

4. "Middle Waterway Problem Area" refers to the contaminated sediments at and adjacent to the Middle Waterway, one of eight Problem Areas at the Site described in the Commencement Bay Nearshore/Tideflats Record of Decision.

5. "Parties" shall mean EPA and the Settling Respondent.

6. "Property" shall mean the Coastcraft Property which is described in Exhibit 1 of this Agreement, located on both sides of the 1000 block of F Street in Tacoma, Pierce County, WA, and depicted generally on the map attached as Exhibit 2.

7. "Record of Decision ("ROD") shall mean the EPA Record of Decision relating to the CB N/T Site, including the Middle Waterway Problem Area, signed on September 30, 1989, by the Regional Administrator, EPA Region 10, and all attachments thereto.

8. "Settling Respondent" shall mean the Mylet Family Limited Partnership No. 1, located at (b) (6), Tacoma, Washington 98405, and Jerry Mylet, the Managing General Partner and Margaret Mylet, the General Partner, of the Mylet Family Limited Partnership No. 1.

9. "Successors in Interest and Assigns" means any "person," as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), including if the person is a corporation, its officers, directors, and employees acting within the scope of their employment, and the corporation's shareholders, who is granted, acquires, or receives right, title, or interest,

including through sale, lease, or foreclosure to any portion of the Coastcraft Property subsequent to the execution of this Agreement. No person can be a Successor in Interest or Assign for purposes of this Agreement and Covenant Not to Sue until he or she agrees in writing to be bound by the requirements of this Agreement and EPA provides written approval.

10. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

A. CB N/T Superfund Site

11. On September 6, 1983, portions of Commencement Bay shallow water, shoreline, tideflats, sediments, and upland areas in Tacoma, Washington, (the CB N/T Site) were listed on the National Priorities List of hazardous substance sites pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as amended. 48 Fed. Reg. 40,658 (September 8, 1983). The Commencement Bay waters, shoreline, sediments, tideflats, upland areas and other areas within the CB N/T Site have become contaminated as a result of the release of a variety of hazardous substances and waste products into the terrestrial, freshwater, groundwater, and marine environments.

12. On September 30, 1989, EPA issued a Record of Decision ("ROD") that identified eight "Problem Areas" of contaminated sediments and sources of contamination within the CB N/T Site. The selected remedy for the eight CB N/T Problem Areas includes the following elements: (1) site use restrictions; (2) source

control; (3) natural recovery of marginally contaminated sediments; (4) active remediation of more significantly contaminated sediments; and, (5) long-term monitoring.

13. Any current or former owner or operator of contaminated sediments or sources of contamination within the CB N/T site, among others, may be liable to the United States for the costs of cleaning up releases of hazardous substances pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or for the cleanup of hazardous substances pursuant to Section 106(a) of CERCLA 42 U.S.C. § 9606(a).

14. The Coastcraft Property is located adjacent to the Middle Waterway. The Mouth of the Middle Waterway is one of eight Problem Areas in the CB N/T Site. The hazardous substances and materials which have been released into the environment at the Mouth of Middle Waterway include, but are not limited to, copper, mercury, arsenic, zinc, lead, low polyaromatic hydrocarbons, high polyaromatic hydrocarbons, diterpenoid hydrocarbons, dibenzothiophene, 4-methylphenol, methylpyrenes, dichlorobenzenes, Phenol, and pentachlorophenol, which are "hazardous substances" pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are "pollutants or contaminants" pursuant to Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

15. Information presented in the CB N/T ROD indicates that the remedy for the Middle Waterway Problem Area will require active remediation of some volume of contaminated sediments, with

one of the four options for confined disposal of contaminated sediments being used.

16. Beginning in 1996, EPA intends to begin a remedial design phase of cleanup for the Middle Waterway Problem Area to further refine the areal extent of the contamination, assess natural recovery predictions, evaluate source control measures, and select a remediation plan for this Problem Area.

B. Coastcraft Property

17. On April 24, 1989, EPA issued a CERCLA general notice of liability letter to Coastcraft, Inc. designating it a potentially responsible party ("PRP") for the cleanup of the Middle Waterway Problem Area at the CB N/T Site. Coastcraft filed for Chapter 7 bankruptcy in 1993. The Property is currently owned by F Street Partners, which is a partnership between Richard and Carolyn Ohlson. There is one tenant currently using a portion of the Property to manufacture cabinets.

18. In 1989, EPA requested information from Coastcraft, Inc. pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). On June 23, 1989, Coastcraft provided its written response to EPA's request, and described its operations at the plant. Coastcraft was in the mill work industry since its inception, manufacturing custom doors, windows, and custom architectural wood products. Coastcraft's operations used various lubricants for the maintenance of machinery, generally purchased in 55 gallon drums, and miscellaneous cleaners and solvents. Among the

materials that Coastcraft purchased and used in its production process was pentachlorophenol. Pentachlorophenol was delivered by truck and pumped directly into a dip tank which was used to water treat woodproducts. The pentachlorophenol was a 5% penta and 95% mineral spirit mixture which was delivered premixed.

19. On January 31, 1994, the Washington Department of Ecology (Ecology) issued its Milestone 1 Report for the Middle Waterway. In the Milestone 1 Report, Ecology listed the Property as a confirmed source of pentachlorophenol (PCP) due to elevated levels of PCP found in catch basin sediments in the stormwater system on the Property. Ecology began its inquiry into the Coastcraft Property's possible contribution to the contamination of sediments at the CB N/T Site with a site inspection conducted on September 17, 1992. Ecology conducted followup sampling to determine if previous PCP treatment activities at the Coastcraft Property resulted in residual contamination of sediments or upland drain structures related to the Property. Ecology sampled catch basins at the Property on November 4, 1993 and sampled adjacent intertidal zone sediments on October 3, 1993 for pentachlorophenol. Results indicated that pentachlorophenol residuals above the Sediment Quality Objectives ("SQO") specified in the ROD exist in both intertidal zone sediments and in catch basins located on the Property. The SQO for pentachlorophenol is 360 ug/l, and the intertidal and catch basin samples were measured at estimated values of up to 690 ug/kg and 650 ug/kg, respectively. To date, the catchbasins have not been cleaned and

continue to be an ongoing source of contamination to the Middle Waterway Problem Area of the Site.

20. Settling Respondent holds a security interest in the Property and has a judgment against the current owners of the Property. Settling Respondent intends to take a deed in lieu of foreclosure on the Property, which will also partially satisfy the judgment.

21. The Settling Respondent hired a consultant to prepare a Phase II Environmental Assessment, which was completed in December of 1995. The Phase II Environmental Assessment documents the nature and extent of releases of hazardous substances, pollutants, and contaminants on the south parcel of the Property. The Phase II Environmental Assessment is attached to this Agreement as Exhibit 3. The results revealed an estimated 400 to 2000 tons of soil contaminated with TPH and PCP above Ecology's MTCA soil cleanup levels. Limited impacts associated with the soil contamination was observed in groundwater immediately beneath the contaminated portion of the Property. Ecology determined that the soil and groundwater contamination is not a current source to the marine sediments.

22. Settling Respondent and Ecology have discussed and have agreed to an approach for addressing the contaminated soils. Settling Respondent intends to remediate the soil contamination described in the Phase II Environmental Assessment under Ecology's Independent Remedial Action Program (IRAP). Monitoring

of groundwater is anticipated to confirm that the soil excavation will reduce TPH and PCP in groundwater below MTCA cleanup levels.

23. The Settling Respondent represents, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following: holding a security interest in the Property; performing an environmental assessment; submitting a Shoreline Development permit application; and making repairs necessary to protect its security interest.

IV. PAYMENT

24. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein Settling Respondent agrees to pay to EPA the sum of \$150,000 as follows: (i) \$80,000 within 30 days of the effective date of this Agreement and, (ii) \$70,000 on or before June 30, 1997, subject to the conditions and possible credit reductions provided in Paragraph 29 below. As additional consideration for the United States' Covenant Not to Sue in Section IX, Settling Respondent agrees to perform a catchbasin cleanup and remove an underground storage tank on the Property, within 30 days of the effective date of this Agreement, which work is described in more detail in Section V below. Settling Respondent also agrees to pay to EPA, within 90 days of the effective date of this Agreement, the difference between \$20,000 and the costs it incurs in performing the catchbasin cleanup and removing an underground storage tank on the Property.

25. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing EPA Region 10, EPA Docket Number 10-95-0134, and Site/Spill ID# 10-G3, and name and address of Settling Respondent. The check should be sent to:

U.S. Environmental Protection Agency
Region 10
ATTN: Superfund Accounting
P.O. Box 360903M
Pittsburgh, PA 15251.

Notice of payment shall be sent to those persons listed in Section XVI (Notices and Submissions) and to EPA Region 10 Financial Management Officer, MD-144, 1200 Sixth Avenue, Seattle, Washington 98101.

26. Amounts due and owing pursuant to the terms of this Agreement, but not paid in accordance with the terms of this Agreement, shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. WORK TO BE PERFORMED

27. Within thirty (30) days of the effective date of this Agreement, Settling Respondent agrees to remove an underground storage tank (UST) from the north parcel and PCP-contaminated sediment from on-site storm drains and catchbasins in accordance with the proposal set out by its consultant, Environmental Partners, Inc., in its September 28, 1995 Proposal for a Phase II Environmental Site Assessment, attached to this Agreement as

Exhibit 4. No later than the 30th day after the effective date of this Agreement, Settling Respondent shall provide EPA with an affidavit certifying that sediments were removed from the storm drains and catchbasins and the UST was removed. Within 90 days of the effective date of this Agreement, Settling Respondent shall provide to EPA an itemized summary of its costs incurred in performing the UST removal and catchbasin sediment cleanup and an affidavit certifying that the cost summary is true and accurate, along with the cash payment, if any, agreed to and provided for in Paragraph 24 above.

28. The Settling Respondent also intends to perform a remedial action on the portion of the Property located south of F Street under the Washington Department of Ecology's Independent Remedial Action Program. The remedial action is described in more detail in Exhibit 3 to this Agreement, but generally consists of PCP and TPH-contaminated soil removal and disposal.

29. No later than June 30, 1997, Settling Respondent shall provide EPA with the following documentation: 1) a letter from Ecology confirming satisfactory completion of the soil excavation and disposal; and 2) an itemized cost summary and copies of paid invoices for costs incurred in performing the soil excavation and disposal, such as, a) removal of the wood floor to access the contamination, b) removal, transportation, and disposal of soil, c) consulting services incurred to characterize the extent of the contamination and oversee the cleanup, d) analytical work, e) backfilling and capping the area, and (f) the IRAP fee; and 3) an

affidavit by Settling Respondent certifying that the cost summary is true and accurate. Subject to EPA review and approval of the cost summary and individual costs contained therein, Settling Respondent shall receive a credit for all soil removal and disposal costs it incurs in excess of \$170,000, up to a maximum of \$70,000 credit. If the total soil removal and disposal costs are less than \$240,000, then the Settling Respondent shall pay EPA, as set forth in Paragraph 24.(ii). above, the difference between its actual soil removal and disposal costs and \$240,000, which difference shall in no event exceed \$70,000.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

30. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and Ecology, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or Ecology oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the CB N/T Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the CB N/T Site under federal and state law. EPA agrees to provide or have its authorized representatives provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its authorities and rights,

including enforcement authorities, to access, inspect, and gather information, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

31. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office, Pierce County, Washington. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of the recorded documents should be sent to the persons listed in Section XVI (Notices and Submissions).

32. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access, as well as the cooperation required under Section VII below. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section VII (Due Care/Cooperation), Section VIII (Certification), and Section XI (Parties Bound/Transfer of Covenant), of the Agreement and, where appropriate, Section V. (Work to be Performed).

VII. DUE CARE/COOPERATION

33. The Settling Respondent shall exercise due care at the CB N/T Site with respect to the Existing Sediment Contamination and shall comply with all applicable local, state, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the CB N/T Site may interfere with the Settling Respondent's or its lessee's use of the Property, and may require closure of operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the CB N/T Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property or the CB N/T Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VIII. CERTIFICATION

34. By entering into this Agreement, the Settling Respondent certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its employees, contractors and agents which relate in any way to any Existing Sediment Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property or the CB N/T Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property or CB N/T Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

IX. UNITED STATES' COVENANT NOT TO SUE

35. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, and upon completion of the work specified in Section V (Work to be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for

any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Sediment Contamination. Subject to the Reservation of Rights in Section X of this Agreement, the United States' covenant includes civil or administrative action to require remediation of Existing Sediment Contamination in the intertidal portion of the Property which is that portion below the mean high high water mark.

X. RESERVATION OF RIGHTS

36. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Work To Be Performed), Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), and Section XV (Payment of Costs),

(b) any liability resulting from past or future releases of hazardous substances, pollutants, or contaminants, at or from the Property and the CB N/T Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability for existing contamination or future releases of hazardous substances, pollutants, or contaminants to the upland portion of the Property which is all property above the mean high high water mark, and which is all contamination which does not fall within the definition of Existing Sediment Contamination;

(d) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Sediment Contamination;

(e) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the CB N/T Site after the effective date of this Agreement, not within the definition of Existing Sediment Contamination;

(f) criminal liability;

(g) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(h) liability for violations of local, state or federal law or regulations.

37. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Sediment Contamination.

38. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

39. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Property or the CB N/T Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Property or CB N/T Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

40. In consideration of the United States' Covenant Not to Sue in Section IX of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the CB N/T Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111,

112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

41. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States, based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities under Section V of this Agreement, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

42. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent, its employees and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

43. Notwithstanding any other provision of this Agreement, all of the rights, benefits and obligations conferred upon

Settling Respondent under this Agreement may be assigned or transferred to any person only with the prior written consent of EPA in its sole discretion.

44. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the Property.

45. Prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including, but not limited to, the access requirement in Section VI, the due care and cooperation requirement in Section VII, and the certification requirement in Section VIII of this Agreement, in order for the Covenant Not to Sue in Section IX to be available to that party. Attached as Exhibit 5 to this Agreement is an Agreement of Successors in Interest and Assigns that all Successors in Interest and Assigns, or transferees must sign prior to receiving EPA's written consent. The Covenant Not to Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions and subject to all the benefits of this Agreement, except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly.

XIII. DISCLAIMER

46. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the CB N/T Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIX. DOCUMENT RETENTION

47. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. The Settling Respondent agrees to retain all documents relating to the Work To Be Performed under Section V, Paragraph 27 for ten years from completion of the work to the satisfaction of EPA. At the end of the ten year period, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. PAYMENT OF COSTS

50. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), or Section V (Work to be Performed) of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XVI. NOTICES AND SUBMISSIONS

51. Settling Respondent, and any Successors in Interest or Assigns, agree to provide copies of all notices and submissions specified in this Agreement, including notice of payments (with a copy of the check), notice of property transfer, and notice of any spills of hazardous substances from the facility. A copy of such notices shall be mailed to EPA as follows:

Office of Regional Counsel
c/o Lori Houck, Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, SO-158
Seattle, Washington 98101

Environmental Cleanup Office
c/o Peter Contreras, Remedial Project Manager
U.S. Environmental Protection Agency
1200 Sixth Avenue, ECO-113
Seattle, Washington 98101

Financial Management Office [notice of payment only]
c/o Joe Penwell
U.S. Environmental Protection Agency
1200 Sixth Avenue, MD-149
Seattle, Washington 98101

XVII. EFFECTIVE DATE

52. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

XVIII. ATTORNEY GENERAL APPROVAL

53. The Attorney General of the United States or her designee has issued prior written approval of the settlement embodied in this Agreement.

XIX. TERMINATION

54. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Parties agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other parties to terminate such provision(s).

XX. CONTRIBUTION PROTECTION

55. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the CB N/T Site with respect to the Existing Sediment Contamination.

56. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

57. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for

matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XXI. EXHIBITS

58. Exhibit 1 is the legal description of the Property which is the subject of this Agreement.

59. Exhibit 2 is the map depicting the Property.

60. Exhibit 3 is the Phase II Environmental Assessment.

61. Exhibit 4 shall mean the Proposal for Phase II Environmental Assessment describing the catchbasin and UST removal and cleanup.

62. Exhibit 5 shall mean the Agreement of Successors in Interest and Assigns.

XXII. PUBLIC COMMENT

63. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Chuck Clarke
Regional Administrator, Region 10

Date

IT IS SO AGREED:

MYLET FAMILY LIMITED PARTNERSHIP NO. 1

BY:

Jerry Mylet, General Partner

Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Chuck Clarke
Regional Administrator, Region 10

Date

IT IS SO AGREED:

MYLET FAMILY LIMITED PARTNERSHIP NO. 1

BY:

Jerry Mylet
Jerry Mylet, General Partner

3/29/96
Date

EXHIBIT 1

D-E-S-C-R-I-P-T-I-O-N

PARCEL "A":

Lots 46 to 50, inclusive, of NORTHERN PACIFIC RAILWAY COMPANY'S PLAT A, AN ADDITION TO TACOMA, according to Plat recorded in Book 11 of Plats at Page 53, in Tacoma, Pierce County, Washington.

PARCEL "B":

Commencing at the intersection of the Southwesterly line of Middle Waterway produced Southeasterly with the Northerly line of lower East 11th Street; thence Northwesterly along said Southeasterly production line, a distance of 1010.275 feet to the point of beginning of the tract of land herein described; thence Northwesterly along said Southwesterly line, a distance of 100.0 feet; thence Southwesterly at right angles to said Southwesterly line, a distance of 200.0 feet; thence Southeasterly along a line parallel with and a distance of 200.0 feet Southwesterly measured at right angles from said Southwesterly line, a distance of 100.0 feet; thence Northeasterly at right angles to said parallel line, a distance of 200.0 feet to the point of beginning, said Tract being also known as Lot 30 of NORTHERN PACIFIC RAILWAY COMPANY'S UNRECORDED PLAT A, AN ADDITION TO TACOMA, according to Plat recorded in Book 11 of Plats at Page 53, in Tacoma, Pierce County, Washington.

PARCEL "C":

That portion of Block 38 of MAP OF TACOMA TIDE LANDS, according to Plat filed for record September 14, 1895 in the office of the County Auditor, described as follows: Commencing at the point of intersection of the Westerly line of Middle Waterway produced Southerly with the Northerly line of lower 11th Street; thence Northwesterly along said Westerly line of Middle Waterway and said line produced 510.275 feet to the point of beginning; thence Northwesterly along the Westerly line of said Middle Waterway, 500 feet; thence Southwesterly at right angles to said Westerly line of Waterway, 200 feet Southwesterly measured at right angles from said Westerly line of the Middle Waterway, 500 feet; thence Northeasterly at right angles to said Westerly line of Middle Waterway, 200 feet to the point of beginning, being Lots 31 to 35, inclusive, of NORTHERN PACIFIC RAILWAY COMPANY'S UNRECORDED PLAT A, AN ADDITION TO TACOMA, in Tacoma, Pierce County, Washington.

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

Order No. **375937**

D-E-S-C-R-I-P-T-I-O-N

PARCEL "D":

That portion of vacated East 9th Street lying between the East line of East "E" Street and the West line of East "F" Street as vacated by Ordinance No. 15630 and recorded under Auditor's No. 1757776, in Tacoma, Pierce County, Washington.

EXHIBIT 2

NOTICE

This Sketch is furnished as a courtesy only by First American Title Insurance Company and it is **NOT** a part of any title commitment or policy of title insurance.

This sketch is furnished solely for the purpose of assisting in locating the premises and does not purport to show all highways, roads, or easements affecting the property. No reliance should be placed upon this sketch for the location or dimensions of the property and no liability is assumed for the correctness thereof.



ORDER 1
SUBDIVIS. 515431
RCDG NO./VOL. & PG.
QTR NE SEC 4 TOWNSHIP 20 RANG 9

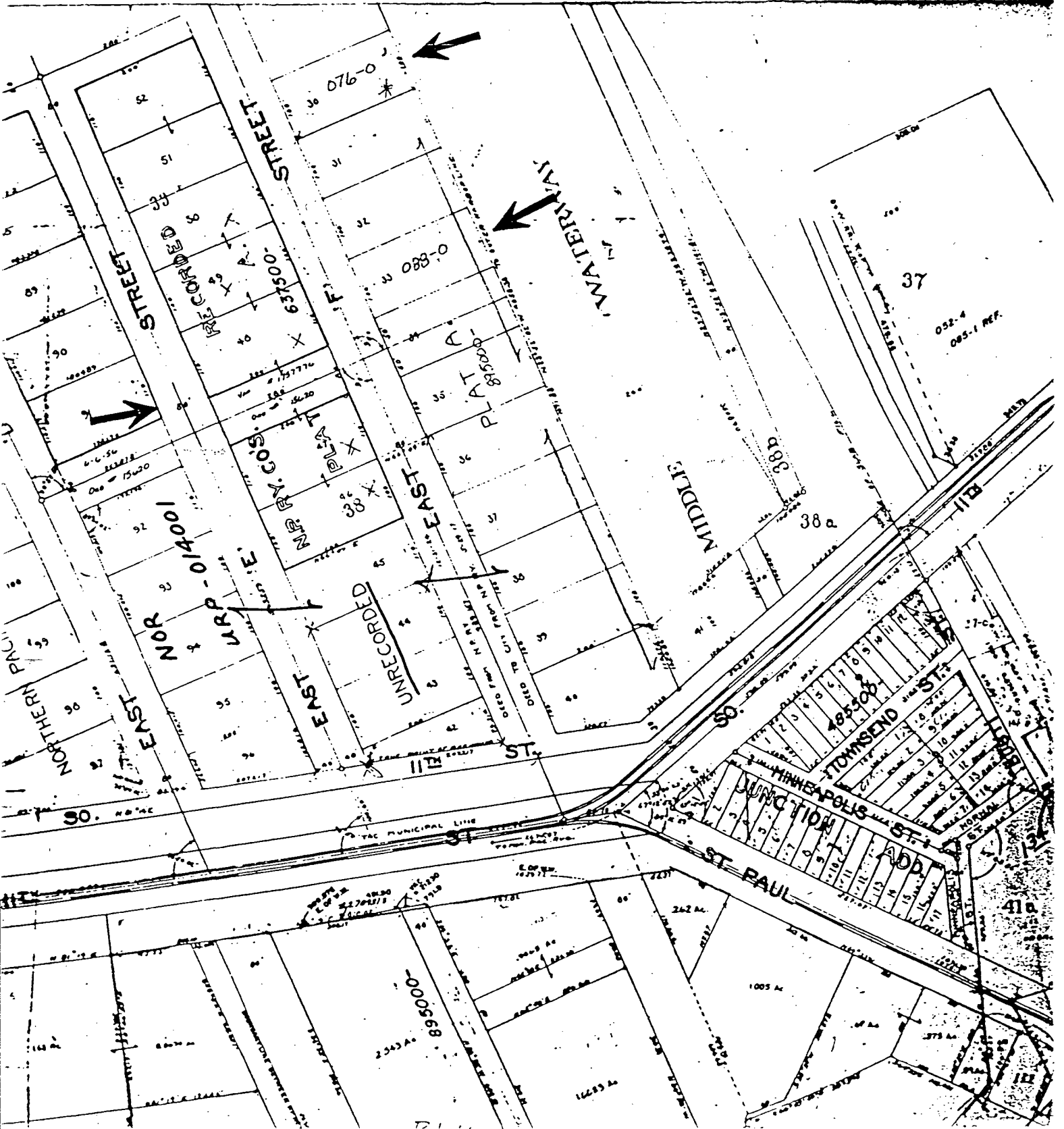


EXHIBIT 3

EXHIBIT 4

CBWSP 8.7.5.17.1

9/28/95

September 28, 1995

Mr. Jerry Mylet
c/o Service Steel and Aluminum Corporation
2420 South Tacoma Way
P.O. Box 2333
Tacoma, Washington 98401

Re: Proposal for a Phase II Environmental Site Assessment
Coastcraft Property, 1002 F Street, Tacoma, Washington

Dear Mr. Mylet,

Environmental Partners, Inc. (EPI) is pleased to submit the following proposal to perform a Phase II Environmental Site Assessment (ESA) of the Coastcraft Property located at 1002 F Street in Tacoma, Washington. It is EPI's understanding that the property is formally a wood products manufacturing facility. A Phase I Environmental Assessment was conducted at the subject property in February, 1991 by ATEC Environmental Consultants (ATEC).

EPI has used the information in the ATEC report to assist in preparing the scope of work for this Phase II ESA, along with reviewing existing Washington Department of Ecology and EPA Region 10 files regarding the subject property.

Proposed Phase II Scope of Work

EPI proposes four tasks to complete the proposed Phase II ESA at the subject property. Two subsequent tasks (Tasks 5 and 6) have been provided depending on the results of Tasks 1 through 4.

Task 1 - Geophysical Survey

EPI will retain Geo Recon to conduct a geophysical survey of the subject property to confirm the presence or absence of unknown underground storage tanks or other metallic structures on the subject property. The geophysical survey will be performed on the north lot and the southern property boundary on the subject property.

Task 2 - Subsurface Investigation

EPI will retain TEG, Inc. to conduct a subsurface investigation at the subject property. Soil and ground water samples will be collected from temporary borings drilled by a Stratoprobe rig. The Stratoprobe is a truck-mounted drill rig that using a 4000-lb per square inch hydraulic arm to push a 1-inch steel drill stem into the subsurface soil. Subsurface conditions at the subject property consist of fill material and sediment, and ground water is shallow, approximately 10 feet bgs.

EPI proposes to collect subsurface soil and ground water in five different locations: adjacent to the existing UST located in the southeast corner of the subject property, two locations adjacent to the western property boundary of the former tank farm, inside the warehouse at the location of the former pentachlorophenol UST and in the area in the northern lot previously used for storing 55-gallon drums of resin used in the manufacturing process by the owner of the subject property. Additional locations may be recommended by EPI based on the results of the geophysical survey.

Soil samples in all five locations will be analyzed for volatile organic compounds (VOCs), TPH-HCID, and total priority pollutant metals (PP metals). Ground water samples in all five locations will be analyzed for VOCs, TPH-gasoline and diesel extended, and total and dissolved PP metals. A soil/water interface sample and ground water sample will also be analyzed for semivolatiles organic compounds (SVOCs) at the location of the former pentachlorophenol UST, the northern lot and the existing UST.

Task 3 - Waterway Bank Soil Sampling

EPI will collect three waterway bank soil samples for analysis of SVOCs. The waterway bank soil samples will be collected in the vicinity of the three storm water drain outfalls to determine if SVOCs are present.

Task 4 - Final Report

EPI will prepare a letter report to document all of the field activities and sampling results at the subject property. The letter report will provide conclusions and recommendations for further activity at the subject property, if required.

Tasks 1 through 3 have been proposed to fulfill due diligence in determining the presence or absence of subsurface soil and ground water contamination at the subject property. If the property is acquired, EPI recommends implementing the following Tasks 5 and 6:

Task 5 - UST Removal

EPI proposes that the UST and associated piping in the southeast corner of the subject property be removed. Any other USTs identified during the geophysical investigation could also be removed at this time. EPI will retain Heritage Construction (Heritage) of Everett, Washington to conduct the UST removal task. A representative from EPI will be present during the UST removal to supervise the activity and to collect soil clearance samples. EPI estimates that five soil clearance samples will be collected from the UST grave. Soil clearance samples will be analyzed for total petroleum hydrocarbons-identification (TPH-HCID).

Task 6 - Sediment Removal

EPI will retain Heritage to conduct the sediment removal activity from the on-site storm water drains and associated piping.

Heritage has proposed two options for removing sediment from the storm water drains. Option 1 consists of "back-flushing" the drain pipe with water and using a vacuum truck or a sump pump to remove the sediment and water from the catch basins. A sewer "snake" may be used to initially cleanout the underground piping; then water would be used to flush out the sediment. The outfall of the storm drain would be plugged to eliminate sediment and water from draining into the waterway.

Option 2 includes excavating the storm water drain lines, removing the piping and replacing the old piping with new PVC pipe. The drain catch basins will be removed and cleaned out, and the old piping will be placed on plastic visqueen. All the sediment would then be transferred to 55-gallon drums and transported off-site to a regulated disposal facility. Option 2 would utilize a minimum amount of water to remove the sediment from the piping and drain catch basins. The remaining piping would be cleaned and disposed as solid waste.

Heritage has informed EPI that Options 1 and 2 can be completed at the same cost. EPI and Heritage would recommend Option 2 as the preferred alternative because it minimizes the amount of wastewater generated, resulting in a lower disposal cost. Option 1 has been provided in case Service Steel and Aluminum prefers that no excavation be conducted at the subject property.

EPI will assist Mr. Mylet in identifying a permitted facility to prepare disposal manifests, transport and dispose of the sediment at a regulated disposal facility. EPI estimates that disposal costs will be reduced by minimizing the amount of water mixed with the sediment in the 55-gallon drums. The disposal costs for the 55-gallon drums containing sediment is \$710 per drum and \$460 per drum for water. A one-time "waste profiling" cost is required for disposal of water and sediment from the Coastcraft site at a regulated disposal facility. A waste profile will be required for each media. The total analytical profiling costs for disposal of the water and sediment is \$1,600. Only one waste profile will be required for disposal of water and sediment from the storm water catch basins and piping.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

IN THE MATTER OF: MYLET FAMILY)	
LIMITED PARTNERSHIP NO. 1	)	Docket No. 10-95-0134
	)	CERCLA
)	
UNDER THE AUTHORITY OF THE	)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL	)	NOT TO SUE RE: COASTCRAFT
RESPONSE, COMPENSATION, AND	)	PROPERTY SEDIMENT
LIABILITY ACT OF 1980, 42 U.S.C.	)	CONTAMINATION LOCATED
§ 9601, <u>et seq.</u> , as amended	)	WITHIN THE COMMENCEMENT
	)	BAY NEARSHORE/TIDEFLATS
	)	SUPERFUND SITE
)	
	)	AGREEMENT OF SUCCESSORS
	)	IN INTEREST AND ASSIGNS
)	

Pursuant to Section XI, Paragraph 41 of the attached Agreement and Covenant Not to Sue, dated _____ ("Agreement"), which is attached hereto and by this reference incorporated herein, the undersigned Successor in Interest and Assign hereby provides notice to the Environmental Protection Agency ("EPA") of its acquisition of a right, title or interest in the former Coastcraft Property, more fully described in the attached Agreement.

The undersigned Successor in Interest and Assign further agrees, as set forth in Paragraph 41 of the Agreement, to be bound by all applicable provisions of the Agreement including,

IT IS SO AGREED BY THE UNDERSIGNED SUCCESSOR IN INTEREST AND
ASSIGN:

BY: _____

ITS: _____

DATE: _____

ADDRESS: _____

APPROVED AND CONSENTED TO:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Regional Administrator, Region 10

Date